

# **EXHIBIT 1**

MEGAN LYNN KELLY

02/11/08

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

4 MEGAN KELLY,

5 Plaintiff,

6 vs.

No. C-07-3002 MMC (EMC)

7 APPLERA CORPORATION,

8 Defendant.  
9  
10  
11  
12  
13  
14  
15

16 DEPOSITION OF MEGAN LYNN KELLY,

17 taken on behalf of Defendant, at Littler Mendelson, 650  
18 California Street, 20th Floor, San Francisco, California,  
19 beginning at 9:57 a.m. and ending at 4:36 p.m., on Monday,  
20 February 11, 2008, before me, DARCY J. BROKAW, RPR, CRR,  
21 CLR, CSR No. 12584.  
22  
23  
24  
25

1 taking the methimazole?

2 A Yes.

3 Q When was that?

4 A I've stopped taking it when I had  
5 surgeries.

6 Q And that leads into my next question. How  
7 many surgeries have you had?

8 A Three.

9 Q When was the first one?

10 A I believe it was in 2006.

11 Q Do you recall what month in 2006?

12 A I think it was November.

13 Q And what part of your body was operated  
14 on?

15 A My right ankle.

16 Q When was the second or the next surgery?

17 A 2007.

18 Q Do you recall what month?

19 A April.

20 Q And what body part?

21 A My right wrist.

22 Q And the third operation?

23 A Again in 2007, and that was in December.

24 Q And what body part?

25 A Tonsils.

1 THE WITNESS: I'm sorry, could you repeat  
2 the question?

3 BY MR. PAETKAU:

4 Q Yes.

5 What did you understand, either from a job  
6 description or a conversation or word-of-mouth,  
7 anything, were the essential functions of the job as  
8 an associate production chemist with Applied  
9 Biosystems around the time that you applied for  
10 employment, January of '02?

11 MS. McFADDEN: Again, object to the extent  
12 it calls for a legal conclusion.

13 THE WITNESS: I was to run Applied  
14 Biosystems' synthesizers, perform cleavage and  
15 deprotection -- c-l-e-a-v-a-g-e -- and may at a  
16 later time learn to run the HPLC machines and  
17 robots.

18 MS. McFADDEN: What was the last part of  
19 that, HPL machines and?

20 THE WITNESS: HPLC machines and the  
21 robots. They're Biomek, B-i-o-m-e-k, robots.

22 BY MR. PAETKAU:

23 Q Okay. The first two things that you said,  
24 I just had trouble following that.

25 You were assigned some duties initially

1 A Laosiri.

2 Q Laosiri.

3 When you did you start reporting to

4 Mr. Laosiri?

5 A I don't remember exactly.

6 Q Did you have any other supervisors while  
7 you were -- strike that.

8 Before you came back to work in '07, did  
9 you have any other supervisors besides  
10 Ms. Kustermann and Mr. Laosiri?

11 A I had at least one more that I remember,  
12 possibly two. Ana Evanchik, A-n-a,  
13 E-v-a-n-c-h-i-c-h-k -- c-h-i-k. Sorry.

14 And I'm not sure if Bikram Gill was ever  
15 officially my supervisor. B-i-k-r-a-m, G-i-l-l.

16 Q Who was the last supervisor that you had  
17 before you went out on leave?

18 A Jonathan Laosiri.

19 Q So if you would have reported to Evanchick  
20 or Gill, it was between Klustermann and Laosiri?

21 A Kustermann and Laosiri, yes.

22 Q Kustermann; is that right?

23 A Yes.

24 Q Without an "L."

25 MS. McFADDEN: Since there's a couple

1 different leaves here, if you could just clarify  
2 which one you're specifying. There's more than one  
3 leave at issue. Just specify what leave you're  
4 talking about in your questions.

5 BY MR. PAETKAU:

6 Q The one that I'm talking about is you  
7 reinjured your right ankle in September of '04 and  
8 then went out on a leave and then were gone until  
9 June 18, 2007.

10 Do you understand that that's the leave  
11 I'm referring to?

12 A Yes, now. I didn't take that into  
13 consideration --

14 MS. McFADDEN: Okay. So maybe you could  
15 reask the previous questions, since we weren't clear  
16 on what leave in your question.

17 BY MR. PAETKAU:

18 Q Okay. Let me ask first just for  
19 foundation: How many leaves of absence did you take  
20 from the company?

21 MS. McFADDEN: I'm going to object to the  
22 extent it calls for a legal conclusion.

23 You can answer it the best you can.

24 THE WITNESS: Regarding my ankle injury or  
25 overall?

1 BY MR. PAETKAU:

2 Q Overall. And I'm actually referring to  
3 medical leaves of absence right now, not vacation or  
4 anything else right now.

5 A Okay. I took leave when I injured my  
6 ankle in July 2004. I returned to work briefly, was  
7 reinjured and continued leave after that.

8 And I took two weeks, about two weeks'  
9 leave, for my third surgery in December of 2007.

10 Q When did you return back to work after the  
11 first leave in July of 2004?

12 A In September of 2004, I believe.

13 Q And how long were you back at work before  
14 you went out on leave again?

15 A About a week.

16 Q When you returned to work in September of  
17 '04, did you have the same duties?

18 A Yes.

19 Q Did you work the same hours?

20 A I'm sorry, back to the previous question,  
21 did I have the same duties. Do you mean as before I  
22 went out?

23 Q Right. Before you left in July and then  
24 you came back in September for a week, during that  
25 week, did you have the same duties?

1 A As before I left in July, yes.

2 Q Okay. And did you have the same hours,  
3 the same shift?

4 A Yes.

5 Q And what happened during that week? Was  
6 there something that happened that you reinjured  
7 your right ankle?

8 A I was returned to work with restrictions  
9 to be able to sit down whenever I needed to. I was  
10 the only one working on the product line that I was  
11 working on, and I was told early on in that week  
12 that we weren't meeting turnaround time and that we  
13 needed to meet turnaround time; and I was reinjured  
14 because I was trying to take oligos from Savant and  
15 get them ready for the next step of processing  
16 before I went to lunch so they would meet turnaround  
17 time, even though I needed to sit down.

18 Q So what were you doing when you reinjured  
19 your ankle?

20 A I had my hands full of oligos that I had  
21 just taken out of the Savant. I stepped away from  
22 the Savant, and my ankle separated; and when I put  
23 it back down on the floor, it hurt.

24 Q And when you say you had a handful of  
25 oligos, I'm just trying to picture it. Is that test



1 tubes?

2 A We have racks, small racks that you can  
3 load up with vials. They're about 2 or 3 inches  
4 tall vials, and I had a set of these racks in my  
5 hand.

6 Q When your ankle separated, did you fall?

7 A It separated while the foot was up. I put  
8 the foot down, and it crunched. I did not fall to  
9 the ground with the oligos. I did lose my balance  
10 somewhat and took the half step, half jump so I  
11 could get to a table edge to put the oligos down and  
12 balance myself on the table.

13 Q So none of the oligos broke or spilled?

14 A No, they did not.

15 Q You mentioned that there were some  
16 restrictions when you came back from your ankle  
17 injury in September of '04, and one of them, I think  
18 you said, was to be able to sit down whenever you  
19 needed to; is that correct?

20 A I believe so, yes.

21 Q Who provided that restriction?

22 A My -- I believe that was my ankle doctor,  
23 Dr. Al-Shaikh, A-l, dash, S-h-a-i-k-h.

24 Q Did he put that in writing, those  
25 restrictions in writing?

1 A I really don't remember.

2 Q When you started with the company in '02,  
3 did you have any restrictions on the type of work  
4 that you could perform?

5 A No.

6 Q And prior to the time that you went out on  
7 leave in September of '04, had you ever requested an  
8 accommodation to be able to perform your job better?

9 MS. McFADDEN: Prior to '04, prior to  
10 September '04?

11 MR. PAETKAU: I said prior to September of  
12 '04.

13 THE WITNESS: I might have, after the  
14 accident, car accident.

15 BY MR. PAETKAU:

16 Q Do you recall requesting any accommodation  
17 from the company after the car accident?

18 A I don't remember. I might have, but I  
19 don't specifically remember.

20 Q Were you hospitalized as a result of the  
21 car accident?

22 A No.

23 Q Did you see a doctor as a result of the  
24 car accident?

25 A Yes.

1 Q And the surgery that you had on  
2 November 3rd of 2006, by Dr. Andrew Haskell, that  
3 was also surgery to repair your right ankle?

4 A Correct.

5 Q And that was radical Brostrom ligament  
6 repair and arthroscopy surgery on your right ankle  
7 on November 3rd, 2006?

8 A I don't remember all the medical terms. I  
9 know it was an ankle repair and an arthroscopic.

10 Q Okay. When you left in September of '06,  
11 I think you said earlier it was Dr. -- and I don't  
12 want to mispronounce his name, but Al-Shaikh?

13 A Al-Shaikh.

14 Q Okay. And that's A-1, hyphen,  
15 S-h-a-i-k-h?

16 A Yes.

17 Q Was anyone else treating you for your  
18 right ankle condition in and around September of  
19 2004?

20 A I went to the emergency room and was  
21 treated by the emergency room physician. He  
22 referred me to Al-Shaikh, and I went to Al-Shaikh.

23 Q Do you remember where you went, which  
24 emergency room?

25 A Washington Hospital in Fremont.

1 A No.

2 Q -- about your leave?

3 MS. McFADDEN: Make sure you just let  
4 him -- you've been doing a great job, but make sure  
5 you let him finish his questions before you give  
6 your answers.

7 THE WITNESS: Yes.

8 BY MR. PAETKAU:

9 Q No other communications with Ms. Miles?

10 A No other communications with Ms. Miles.

11 Q And it looks like from your calendar here,  
12 281, that you were -- it says, if I'm reading this  
13 correctly, "Off work. Disability begins Wednesday,  
14 the 22nd of September, 2004."

15 A That is what it says, yes.

16 Q Did you see a doctor on the 21st regarding  
17 your right ankle condition?

18 A I was not -- I don't think I was able to  
19 get into a doctor on the 21st. I know I called a  
20 doctor at some point, if not on the 21st, on the --  
21 soon after, and tried to schedule an appointment.

22 Q Which doctor did you call?

23 A I would assume I called Al-Shaikh. I do  
24 not know for sure.

25 Q Okay. Then it looks like, at least my

1 version of your calendar, the next page, 282, is  
2 December of 2005 and then January of 2006.

3 During --

4 MS. McFADDEN: Actually, I think it's  
5 January of 2006; is that right?

6 THE WITNESS: Yes.

7 MR. PAETKAU: December 2005, January 2006.

8 MS. McFADDEN: No, January of 2006.  
9 December is one exhibit.

10 Kelly, 0282, that's January 2006, correct?

11 THE WITNESS: Correct.

12 MR. PAETKAU: I was just reading the  
13 calendars at the top. I understand what you're  
14 saying.

15 BY MR. PAETKAU:

16 Q It reflects dates starting Monday,  
17 January 23rd through Sunday, January 29th, correct?

18 A Correct.

19 Q Okay. Between the time that you went out  
20 on the 22nd, after reinjuring your right ankle, 22nd  
21 of September, 2004, and the entry here, the next  
22 entry on page 282, the 23rd of January, did you have  
23 any communication with anyone at the company?

24 A I called and left messages. I never  
25 received responses.

1 Q Who did you call?

2 A I called Jonathan Laosiri.

3 Q Did you ever call anyone in the company's  
4 human resources department between September 22nd,  
5 '04 and January 23rd, 2006?

6 A I don't remember.

7 Q How many messages did you leave with  
8 Mr. Laosiri?

9 A I don't remember. I would call him at  
10 points to report on whether or not I was able to  
11 return to work.

12 Q Did you ever send anything in writing,  
13 such as an e-mail or fax, to Mr. Laosiri during the  
14 time that you were out on leave?

15 MS. McFADDEN: Again, this is, just to  
16 clarify, the same time frame through January 23rd?

17 MR. PAETKAU: September 22nd, 2004 through  
18 January 23rd of '06.

19 MS. McFADDEN: So during that time frame,  
20 did you send any e-mails or faxes?

21 THE WITNESS: I believe so, yes.

22 BY MR. PAETKAU:

23 Q What did you send?

24 A I sent a fax.

25 Q What did the fax say?

1 A No, I don't think so.

2 Q More than five?

3 A There are book boxes that I haven't opened  
4 that should not have any paperwork. There are more  
5 than five of those, and I haven't looked at them  
6 recently.

7 Q When you said you called and left messages  
8 with Mr. Laosiri, between September 22nd, 2004, and  
9 January 23rd, 2006, how many messages -- what's your  
10 best estimate of the number of messages you left for  
11 Mr. Laosiri?

12 A The best I can say is that I called him  
13 after doctors' appointments. I don't know how many  
14 doctors' appointments, therefore I don't know how  
15 many messages.

16 Q Did you ever get him live during this time  
17 period when you were out on leave?

18 A Not that I can remember.

19 Q And beyond the fax of the doctor's note  
20 from Al-Shaikh, did you ever send anything in  
21 writing to Mr. Laosiri during this time period of  
22 your leave?

23 A I'm sorry, could you repeat that?

24 Q Sure.

25 MR. PAETKAU: Could you read that back,

1 Q Right. September of '04.

2 A I worked the first shift.

3 Q When you say "first shift," what were the  
4 hours of the first shift?

5 A They -- currently, the hours of the first  
6 shift are from 7:00 until 3:30. Core lab, for a  
7 while, had only one shift, and we came in and left  
8 at our discretion, with our supervisor's approval,  
9 as long as we worked eight hours.

10 Q Was that 7:00 -- 7:00 to 3:00 p.m. in the  
11 core lab?

12 A 7:00 to 3:30 was the -- is the standard  
13 shift now.

14 Q How about in 2004, before you went out on  
15 leave, was it the same?

16 A I think it was -- I'm not sure if it was  
17 the same then. I think it was.

18 Q Just to clarify, Exhibit 4, which is the  
19 note here that was produced today, Kelly 0295, to  
20 your knowledge, did either you or anyone at Fremont  
21 Orthopedic Medical Group fax, mail, e-mail or  
22 deliver this document to anyone at the company?

23 A I don't recall.

24 Q During the time that you -- the first  
25 period of your employment which we've been talking



02/11/08

1 A April 18th, I believe.

2 Q So figure a week goes by. And then you're  
3 ready to return when, end of April, early May?

4 A I don't recall.

5 MS. McFADDEN: Objection; calls for  
6 speculation.

7 THE WITNESS: I don't recall the exact  
8 date.

9 BY MR. PAETKAU:

10 Q What restrictions did -- was it Dr. Rose  
11 who operated on your wrists?

12 A Yes.

13 Q And it was just the one, the right wrist?

14 A Correct.

15 Q And no operation on any shoulder?

16 A Correct.

17 Q And no operation on the left wrist?

18 A Correct.

19 Q So the surgeries are the right ankle in  
20 November of '06, and then the right wrist in April  
21 of '07, correct?

22 A Correct.

23 Q And then the recent tonsilitis.

24 Did Dr. Rose give you any restrictions on  
25 returning to work after the right wrist surgery in

1 that.

2 Do you currently have a lifting  
3 restriction?

4 A I still only lift 5 pounds.

5 Q Okay. And has that lifting restriction  
6 changed over time?

7 A No.

8 Q So it's always been no more than 5 pounds?

9 A I believe so.

10 Q Is there anything that you did before  
11 going out on medical leave in September of '04 that  
12 would have required you to lift more than 5 pounds?

13 A Yes.

14 Q What activity would -- do the trays, do  
15 they weigh more than 5 pounds?

16 A The trays do not weigh more than 5 pounds.  
17 The boxes of paperwork for archiving, the boxes of  
18 chemicals, some of the individual chemical jugs that  
19 you need to use. I don't recall what else. There  
20 may be more.

21 Q Okay. When you say "chemical jugs" that  
22 you work with, are there -- are there chemicals that  
23 you regularly work with currently? Is that the  
24 eight that you identified earlier, eight types of  
25 different chemical compounds?

02/11/08

1           A     Currently, I am not working with the  
2 chemicals. The eight chemicals that I identified  
3 were for synthesizers, and those are part of what is  
4 used in the lab, but not all of it.

5           Q     Do you -- in the lab, do you use any type  
6 of acids, sulfuric or any other type of acid?

7           A     There is acetic acid. And there may be  
8 others, but I don't recall offhand.

9           Q     Are there chemicals that would be  
10 particularly dangerous if they were spilled on your  
11 skin or if it was inhaled?

12          A     Yes.

13          Q     Which chemicals are those?

14          A     Again, this isn't an exhaustive list.  
15 There's -- most of the chemicals that are used for  
16 the synthesizer are considered hazardous in some  
17 way. There's also cleavage chemicals, which are  
18 ammonium hydroxide, which are extremely hazardous.

19          Q     You mentioned that you were still  
20 experiencing some problems with your right ankle; is  
21 that accurate?

22          A     Yes.

23          Q     Can you describe the symptoms or the pain  
24 that you're currently experiencing with your right  
25 ankle condition?

1 think, on September 22nd.

2 So I'm trying to get at: Did the symptoms  
3 become worse over time before you had the surgery in  
4 November of '06, or did it just stay the same?

5 MS. McFADDEN: The symptoms of what?

6 MR. PAETKAU: The right ankle condition.

7 MS. McFADDEN: Do you want to specify  
8 which symptoms?

9 BY MR. PAETKAU:

10 Q The pain, the discomfort, the feeling like  
11 it was going to give out.

12 A It's hard to remember all that was  
13 happening. It was not improving. It was not  
14 improving, but can I say that it was getting worse?  
15 I'm not -- I'm not sure how I could define that,  
16 because my life was so limited at that point.

17 Q And during that time, that leave -- well,  
18 at least between September 22nd of '04 until the  
19 surgery, November 3rd of '06, did you stay at your  
20 house in Berkeley most of the time?

21 A Mostly, I stayed in Berkeley.

22 Q Where else did you go during that leave?  
23 Did you visit anyone, go on any trips?

24 A I visited my mother. She would come out  
25 to help me. So one time it was decided it would be

1 easier to go out there, and she would be at home and  
2 she could do things for me there. And I think I  
3 took one family holiday trip. That's all I can  
4 recall right now.

5 Q The trip to visit your mom, she was in  
6 Arizona?

7 A Yes.

8 Q And you stayed for about a month?

9 A I don't know how long I stayed. I don't  
10 remember.

11 Q When was that trip?

12 A I don't remember.

13 Q How about the family holiday trip, when  
14 was that?

15 A It was around the Christmastime, but I  
16 don't remember what year.

17 Q So it could have been '04, it could have  
18 been '05, it could have been '06?

19 A It's possible.

20 Q Where was the holiday trip?

21 A Philadelphia.

22 Q And you were still using braces when you  
23 made that trip?

24 A Braces and crutches.

25 Q After you had the surgery on your right

1 ankle on November 3rd of '06, did that improve the  
2 health or condition of your right ankle?

3 MS. McFADDEN: Did the surgery on her  
4 wrist improve the condition of her ankle?

5 MR. PAETKAU: No. The surgery  
6 November 3rd of '06 on her right ankle, the radical  
7 Brostrom ligament repair and arthroscopy.

8 MS. McFADDEN: Do you understand the  
9 question?

10 THE WITNESS: Not quite. What time frame?  
11 BY MR. PAETKAU:

12 Q Sometimes we get wrapped up with these  
13 medical terms.

14 Did you feel better after the surgery?

15 MS. McFADDEN: The November surgery?

16 MR. PAETKAU: Yes.

17 THE WITNESS: Not immediately; but at some  
18 point, yes, there was some improvement.

19 BY MR. PAETKAU:

20 Q Okay. When you say "improvement," can you  
21 describe how it was better after than it was -- the  
22 symptoms you were suffering from before the surgery?

23 A It felt more stable. That was the main  
24 one. It felt more stable.

25 Q And I think we've kind of covered this,

1 to you, that your right wrist was becoming so  
2 painful that you had to stop the task?

3 A Within the last couple of weeks.

4 Q Did you talk with anyone -- did you talk  
5 to anyone at the company about that problem?

6 A I don't remember.

7 Q Did the numbness in your -- it's your left  
8 wrist, right, that you felt the numbness, or both?

9 A At which point?

10 Q After the -- or during the functional  
11 physical exam, that was your left wrist that you  
12 felt numb?

13 A Correct.

14 Q Was there a time, a point in time when you  
15 injured your right wrist?

16 A Yes.

17 Q When was that?

18 A It was 2006 or 2007, I think. I'm not  
19 sure which.

20 Q So somewhere in those two years, you  
21 injured your right wrist?

22 A Yes.

23 Q Somewhere in that -- how many days is  
24 that, 365 per year?

25 Can you narrow it down any more than that,

1 by season, month?

2 Let me try to refresh your memory  
3 differently.

4 Did you injure your right wrist before or  
5 after you injured your left wrist?

6 A After.

7 Q Do you recall how long after?

8 A No.

9 Q Do you recall an event, for example, a  
10 fall, where you fell on your right wrist that  
11 injured it or some other precipitating cause?

12 A I was trying to get down a step; and it  
13 must have been after my ankle surgery, because my  
14 primary concern was not to hit my ankle.

15 Q So that helps. It's some point after  
16 November 3rd of '06 that you injured your right  
17 wrist, correct?

18 A Yes.

19 Q And you said you were getting down from a  
20 step. Did you actually fall and have to brace  
21 yourself with your right hand?

22 A I slipped off a step -- there's a single  
23 step down. I slipped somehow, I'm not sure, and  
24 I -- my wrist slammed into the wall.

25 Q Did you go to see any doctors after that



1 happened?

2 A I would believe so, but I can't tell you  
3 any details. I don't remember.

4 Q I'm just trying to get a handle on -- you  
5 had seen somebody before this for your left wrist,  
6 correct?

7 A Yes.

8 Q Did you remember the name, either the ER  
9 doc or -- oh, Basil Besh was the person that you had  
10 the follow-up visit with?

11 A Besh, B-e-s-h, yes.

12 Q Okay. Thanks.

13 And that was specifically for the left  
14 wrist, correct?

15 A I believe so, yes.

16 Q Do you know if you went back to visit him,  
17 Dr. Besh, for the -- after you injured the right  
18 wrist?

19 A I don't remember.

20 Q How many falls did you sustain after the  
21 reinjury of your right ankle in September of '04?  
22 Approximately, your best estimate.

23 A I don't know. I have no way of estimating  
24 that.

25 Q No way of estimating?

1           A     It's not something where you have a mental  
2 tally in your head, saying, whoops, that's one;  
3 whoops, that's two; whoops, that's three. It's I  
4 don't recall.

5           Q     Well, that's helpful, actually. What I  
6 was trying to get at is: Was it a regular  
7 occurrence, like you fell once a week or once a  
8 month, or was it only twice a year?

9           A     I was on crutches, trying not to fall. I  
10 don't recall patterns of falling.

11          Q     Okay. Let me ask it slightly differently.  
12                Do you recall any other falls -- other  
13 than this, where you were trying to get down a step  
14 and you slammed your right wrist against the wall,  
15 do you recall any other falls in which you injured  
16 or reinjured either wrist?

17               MS. McFADDEN: I'm going to object to your  
18 characterization. Misstates testimony in terms of  
19 "trying to get down."

20               THE WITNESS: I don't recall.

21 BY MR. PAETKAU:

22          Q     Would you say that you fell and hurt your  
23 wrist, one or the other, more than five times?

24          A     Again, I have no mental tally. I have no  
25 way of estimating. I really don't recall.

1 Q Well, was it more than a hundred times  
2 that you fell and hurt your wrists?

3 A I think I would remember that, so probably  
4 not.

5 Q Okay. And I'm just trying to help you.  
6 Was it more than 50 times, more or less than 50  
7 times that you fell and injured your wrists?

8 A I don't think so.

9 Q Not more than 50? How about 30? Do you  
10 recall if it was more or less than 30 times?

11 A I don't remember. This is getting down to  
12 a number where it's not so -- it's not a hundred,  
13 it's not a thousand, it's not 10 million. It's not  
14 an outrageous number. I don't know.

15 Q I understand, it's hard to remember the  
16 total. I'm just trying to get a range.

17 So it's somewhat under 50. And would you  
18 say between 10 and 50 as the number of times that  
19 you -- where you fell and either injured or  
20 reinjured a wrist or both wrists?

21 A I would say -- I would agree to saying  
22 under 50, maybe, but I don't know a range. I don't  
23 know for sure.

24 Q Okay. Was it at least 10 times that  
25 you've fell, though, and injured either or both

1 wrists?

2 A I don't know.

3 MS. McFADDEN: Asked and answered.

4 BY MR. PAETKAU:

5 Q The numbness that you felt in your wrist,  
6 did you report to any doctor that your wrist was  
7 still, quote, popping on the outside of your wrist?

8 MS. McFADDEN: Can you repeat that  
9 question? There's two or three things going on with  
10 the question.

11 MR. PAETKAU: Yes. Let me just try to  
12 rephrase it.

13 BY MR. PAETKAU:

14 Q Do you recall telling any doctor that your  
15 wrist was still popping on the outside, or words to  
16 that effect?

17 A I don't recall what I've said about my  
18 wrists.

19 Q You would recall if you used the word  
20 "popping," one way or the other?

21 A I would not necessarily recall that, no.

22 Q Did you ever describe to anyone a  
23 phenomenon of your wrist popping?

24 A I can't recall.

25 Q The numbness, do you recall telling any of

1 Kelly 126. Do you know whose handwriting that is?

2 A I'm not sure.

3 Q Do you know if it -- do you recognize it  
4 as your handwriting?

5 A I don't. There's not enough there for me  
6 to recognize.

7 Q Do you know a Nancy?

8 A I don't remember a Nancy, no.

9 Q In reference to any -- in reference to  
10 either disability benefits or your leave of absence,  
11 did you ever talk to anyone either at Unum or  
12 Applera named Nancy?

13 A I don't remember.

14 Q Okay. On the second page of Exhibit 6,  
15 Kelly 127, in the, I guess, second-to-last  
16 paragraph, it says that:

17 "You are eligible to receive salary  
18 continuation for up to 26 weeks. Based on  
19 your length of service, your salary  
20 continuation is six weeks of pay at  
21 100 percent and 20 weeks of pay at  
22 70 percent. You will receive salary  
23 continuation only for the period during  
24 which you are medically certified as  
25 disabled and cannot do your regular work."

MEGAN LYNN KELLY

02/11/08

1 Did you receive the salary continuation  
2 payment promised in this letter?

3 A I believe so.

4 Q So you got the six weeks of full pay plus  
5 20 weeks of pay at 70 percent?

6 A Offset by state disability, yes, I believe  
7 so.

8 Q Okay. Maybe this is a good time so I can  
9 get a handle on this.

10 When you say "state disability," when did  
11 you apply for state disability benefits?

12 A I don't remember when I applied, but I did  
13 apply.

14 Q How much do you receive in state  
15 disability payments?

16 MS. McFADDEN: Now?

17 BY MR. PAETKAU:

18 Q Currently.

19 A State disability? I currently receive  
20 nothing.

21 Q When you applied, were you approved for  
22 state disability benefits?

23 A Yes.

24 Q And what was the monthly or quarterly  
25 payout for the state disability benefits?

MEGAN LYNN KELLY

02/11/08

1 A I don't remember.

2 Q Can you give me a ballpark?

3 A I'm afraid not.

4 MR. PAETKAU: Next in order, a two-page  
5 document, Kelly 277 and 278.

6 (Defendant's Exhibit 7 marked  
7 for identification)

8 MS. McFADDEN: Same thing, read the whole  
9 thing and then look up when you're done.

10 BY MR. PAETKAU:

11 Q Do you recognize what I've marked as  
12 Exhibit No. 7?

13 A I do. It's a Unum letter addressed to me  
14 regarding short-term disability.

15 Q Do you recall receiving this letter?

16 A I've received letters like it.

17 Q You don't recall this one from any other  
18 ones?

19 A They sent several. I don't recall this  
20 one specifically.

21 Q I'll represent to you that the Bates  
22 numbers at the bottom, Kelly, indicates that they  
23 were produced by you to us. So does that help  
24 you --

25 MS. McFADDEN: And just for the record,

MEGAN LYNN KELLY

02/11/08

1 just for the record, there's a cc to Applera, and  
2 they request the personnel file. It doesn't  
3 necessarily reflect that it was originally  
4 plaintiff's document.

5 MR. PAETKAU: Okay.

6 BY MR. PAETKAU:

7 Q But as you sit here today, you don't  
8 recall one way or the other whether you received a  
9 copy of this?

10 A Do I recall specifically getting a  
11 July 14th, 2004 letter from Unum Provident, no. Do  
12 I recall getting letters similar to Unum Provident,  
13 stating short-term disability, it's regarding  
14 short-term disability and they want release forms,  
15 yes, I remember things like that.

16 Q Okay. And as part of your claim for  
17 short-term disability, did you fill out a claim form  
18 or an application to submit to Unum?

19 A I'm sorry, could you repeat that? I lost  
20 the first part of the question.

21 Q Sure.

22 As part of this short-term disability  
23 claim, did you submit a claim form or an application  
24 to Unum?

25 A I believe so.



MEGAN LYNN KELLY

02/11/08

1 Q And is all the information that you  
2 provided to either Unum or state disability, was it  
3 true and correct?

4 A To the best of my knowledge at the time I  
5 presented the information, yes, things were correct.

6 Q Okay. Did you tell Unum at any time --  
7 strike that.

8 Did you have a conversation with anybody  
9 at Unum, whether Heidi -- Heidi Krog, disability  
10 benefits specialist, or anybody else at Unum ever  
11 discuss with you a possible return to work?

12 MS. McFADDEN: At any time?

13 BY MR. PAETKAU:

14 Q At any time.

15 MS. McFADDEN: That's -- so the question  
16 is -- let me just -- Madam Reporter, could you  
17 reread that question, please, for me.

18 (The record was read back by the reporter as follows:

19 "Q Did you have a conversation  
20 with anybody at Unum, whether  
21 Heidi -- Heidi Krog, disability  
22 benefits specialist, or anybody  
23 else at Unum ever discuss with  
24 you a possible return to work?")

25 MS. McFADDEN: The first question is a

MEGAN LYNN KELLY

02/11/08

1 Q Did you represent to Unum in your  
2 application for either short-term or long-term  
3 disability benefits that you were unable to work?

4 A I don't --

5 MS. McFADDEN: At what time? Can you  
6 specify?

7 BY MR. PAETKAU:

8 Q At any time in the history of the world.

9 A I don't recall what was in the  
10 applications at this time.

11 Q I'm not asking you whether you recall  
12 what's in the applications. I'm asking you whether  
13 you made a representation, verbal or written, to  
14 Unum at any time in support of your application for  
15 either short-term disability benefits or long-term  
16 disability benefits that you were unable to work?

17 MS. McFADDEN: So ever, have you ever made  
18 a representation that you could not work to Unum.

19 THE WITNESS: Since I was off work,  
20 there's a possibility, but I don't remember anything  
21 specific.

22 BY MR. PAETKAU:

23 Q How much in benefits -- when did the Unum  
24 benefits start?

25 A I don't remember.

MEGAN LYNN KELLY

02/11/08

1 Q It looks like from what we just looked at  
2 that you were -- you had submitted a claim on or  
3 about July of 2004.

4 Does that refresh your recollection as to  
5 when benefits kicked in?

6 MS. McFADDEN: I'm going to object.  
7 States facts not in evidence.

8 THE WITNESS: I don't recall when they  
9 started paying benefits.

10 BY MR. PAETKAU:

11 Q When they started paying benefits, do you  
12 remember what the amount of the benefit check was?

13 A No, I do not.

14 Q Do you have a ballpark for that?

15 A No, I do not.

16 Q Were you getting more than a million bucks  
17 a month?

18 A No, I was not.

19 Q Under a million?

20 A Yes, definitely under a million.

21 Q More than a dollar?

22 A Most likely.

23 Q Okay. So we're getting closer, we're  
24 circling it.

25 Can you give me your best estimate of what

MEGAN LYNN KELLY

02/11/08

1 your monthly check was from Unum, either the  
2 short-term disability check or the later long-term  
3 disability check?

4 MS. McFADDEN: The question is vague and  
5 ambiguous.

6 THE WITNESS: I don't remember what my  
7 monthly salary was. I have not even calculated it  
8 out for what I'm currently earning. So I don't  
9 remember.

10 BY MR. PAETKAU:

11 Q Was the Unum -- were the Unum disability  
12 checks -- strike that, start again.

13 Did you receive more than one check from  
14 Unum?

15 A In the entire history of the world?

16 Q Yes.

17 A Yes.

18 Q Were they direct deposited, or did it come  
19 in a manual check?

20 A I think they came as manual checks, but  
21 I'm not sure.

22 Q And you don't remember -- I'm not trying  
23 to trick you, but usually when I get a check from  
24 somebody, I kind of look at it and say, okay, two  
25 grand is going into my checking, whatever.

1           You don't have any memory of what the  
2       ballpark amount of the checks were from Unum?

3           A     It was years ago, and I really don't  
4       remember.

5           Q     Do you remember if it was more or less  
6       than 2,000 per month?

7           A     A \$2,000 ballpark range, I would accept,  
8       but I don't know if it was more than or less than or  
9       even half close to.

10          MR. PAETKAU: Okay. Next in order is an  
11       August 4, 2004 letter from -- looks like the  
12       letterhead of Unum Provident, Kelly 275 and 276.  
13       No. 8.

14                       (Defendant's Exhibit 8 marked  
15                       for identification)

16          MS. McFADDEN: Same thing, read that over,  
17       and then look up when you're done.

18       BY MR. PAETKAU:

19          Q     Do you recall what I've marked -- do you  
20       recognize what I've marked Exhibit No. 8?

21          A     It's a Unum Provident letter, dated  
22       August 4th, regarding short-term disability claim.

23          MS. McFADDEN: When he says "do you  
24       recognize it," he's asking do you know what this is,  
25       have you seen it before.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

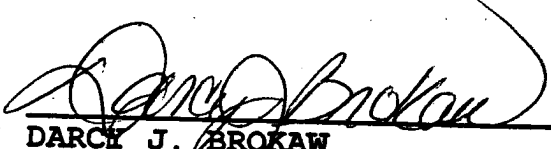
3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [ ] was [☒] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: FEB 15 2008

22  
23   
24 DARCE J. BROKAW  
25 CSR No. 12584

MEGAN KELLY  
VOLUME 2

04/01/08

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4

5 MEGAN KELLY,

6 Plaintiff,

7 vs.

No. C-07-3002 MMC (EMC)

8 APPLERA CORPORATION,

9 Defendant.  
10  
11  
12  
13  
14

---

15 Deposition of MEGAN KELLY, Volume 2, taken on behalf  
16 of Defendant, at 650 California Street, San Francisco,  
17 California, beginning at 10:07 a.m. and ending at  
18 11:57 a.m. on Tuesday, April 1, 2008, before Theresa  
19 Darnell, Certified Shorthand Reporter No. 9966.  
20  
21  
22  
23  
24  
25

MEGAN KELLY  
VOLUME 2

04/01/08

1 don't remember speaking with him.

2 Q And was that in the January 2006 time frame?

3 A That would be when the note came out. I don't  
4 remember.

5 Q When you say "note," what note are you referring  
6 to?

7 A The doctor's note that released me to work 12  
8 hours. I called him after I had received that.

9 Q And that note, was that signed by, to your  
10 knowledge, by Dr. -- or prepared by Dr. -- well, who  
11 prepared that doctor's note?

12 MS. McFADDEN: Asked and answered.

13 THE WITNESS: Dr. Al-Shaikh, I think.

14 BY MR. PAETKAU:

15 Q Did you ask him for a note to return to work?

16 MS. McFADDEN: Asked and answered.

17 THE WITNESS: I asked him for work notes, yes.

18 BY MR. PAETKAU:

19 Q Did you specifically ask him in that time frame,  
20 January '06, for a note to return to work?

21 A I don't remember how that note came about. I  
22 was always asking for work notes.

23 Q After leaving the message in January of '06 with  
24 Mr. Laosiri, do you recall leaving any other messages for  
25 him at any time after that point in time.



MEGAN KELLY  
VOLUME 2

04/01/08

1 A I don't remember.

2 Q How about with Stefan Lazar, other than the  
3 phone call towards the end of January '06 when he  
4 informed you the company could not accommodate your  
5 request, do you recall any other either telephone  
6 conversations or e-mail communications with Mr. Lazar?

7 A I don't remember.

8 Q Did you, Ms. Kelly, at any time have anyone in  
9 your home to assist with your daily activities?

10 A I would have people come to help me with  
11 cleaning and cooking.

12 Q Can you give me, as best you can recall, the  
13 list of people that you had come to your home to help you  
14 with cooking and cleaning?

15 A I would have my mother come when she could. I  
16 had my father visit. I had Eric Mayer come, and there  
17 may have been others, but those were the ones that  
18 usually came.

19 Q When you say there may have been others, did you  
20 hire anyone or did anyone hire someone for you to -- that  
21 is in the business of providing home health care?

22 A Not that was in the business of home health  
23 care, no.

24 Q Did you hire a nurse at any time?

25 A No.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

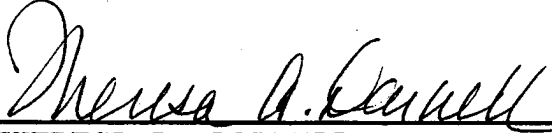
3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [ ] was [ ] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: APR 14 2008

22  
23   
24 THERESA A. DARNELL  
25 CSR No. 9966